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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,077	04/15/2004	Martin Stanton	23239-531 CIP	9984

30623 7590 03/27/2007  
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY  
AND POPEO, P.C.  
ONE FINANCIAL CENTER  
BOSTON, MA 02111

EXAMINER
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VIVLEMORE, TRACY ANN

ART UNIT	PAPER NUMBER
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1635

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/27/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/826,077

Applicant(s)

STANTON ET AL.

Examiner

Tracy Vivemore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4-10 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) 5,7-9 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,6,10 and 13-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Any rejection or objection not reiterated in this Action is withdrawn.

### ***Election/Restrictions***

Claims 5, 7-9 and 12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 24, 2006.

Claims 1, 4, 6, 10 and 13-18 are examined on the merits.

### ***Response to arguments: Priority***

The filing date accorded the subject matter of claims 10 and 13-18 is April 15, 2004, the filing date of the instant application. Applicants assert that the claimed embodiments of the present invention should have a priority date of June 18, 2002, the filing date of provisional application 60/390,042, arguing that this application provides a comprehensive teaching of aptamer-drug conjugates. This argument is not persuasive because no support could be found in application 60/390,042 for aptamer-drug conjugates having the formula shown in claim 10 or for aptamer-drug conjugates comprising DAVCH, Boc-protected amines, dendrimers or comb polymers.

***Response to arguments: Claim Rejections - 35 USC § 103***

Claims 1, 4, 6, 10 and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warren (of record) in view of Holmes (of record), Apelgren et al. (of record) and Virtanen et al. (of record). This rejection is maintained for the reasons set forth in the office action mailed July 12, 2006.

Applicants argue the obviousness rejection does not provide the evidence required to support a rejection under 35 USC 103. It is noted that applicants' arguments quoting the previously applied written description rejection are moot in view of the withdrawal of this rejection. To support their argument applicants point to the examiner's "acknowledgement" of the deficiencies of the Warren reference. Applicants are correct that Warren et al. do not teach all limitations of the claims; if it did the claims would be rejected for anticipation under 35 USC 102. The rejection of record is for obviousness and is necessarily based on a combination of references and not the teachings of any one reference alone. The alleged deficiencies of the Warren reference are in fact the examiner's proper application of the *Graham v Deere* factual inquiries, which require the examiner ascertain the differences between the prior art and the claims at issue.

Applicants further argue the Holmes reference is completely silent on the use of aptamers. It is correct that the Holmes reference is silent with regard to use of aptamers; however, this reference is not relied upon to teach aptamers but is relied upon to provide a motivation why the person of ordinary skill in the art would produce conjugates comprising aptamers targeted to PSMA.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tracy Vivlemore whose telephone number is 571-272-2914. The examiner can normally be reached on Mon-Fri 8:45-5:15.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Schultz, can be reached on 571-272-0763. The central FAX Number is 571-273-8300.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight

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(EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Tracy Vivlemore  
Examiner  
Art Unit 1635

TV  
March 20, 2007

A handwritten signature in black ink, appearing to read 'R. Schnizer', with a long horizontal line extending to the right.

RICHARD SCHNIZER, PH.D.  
PRIMARY EXAMINER